WP(C) 5011/2007
BEFORE
THE HON'BLE MR. JUSTICE B.K.SHARMA

Heard Mr. I. Rafique, learned counsel for the petitioner as well as Mr. M.K. Misra, learned Standing Counsel, Education Department.

This writ petition has been filed making a grievance against the fact finding enquiry report dated 22.5.2007 submitted by the Joint Director of Secondary Education, Assam. In the said enquiry, it has been found that the petitioner while was holding the post of Superintendent as in-charge, misappropriated Rs.80,000/-. The observation and comments of the Enquiry Officer made on the basis of the materials on record are reproduced below :-

Observation and comments :-

On the verification of different records and on being heard the following points are observed -

1.Though all the allegations are not authentic but some of the allegations are found genuine and thus Md. Abdul Kalam Azad, Supdt. I/c J.K. Arabic College is found guilty. He is neither a good head of an educational institutional. He is not found to be a sincere, active, dutiful Govt. employee. He should be penalized for delinquency of duties under Rule 7 of the Discipline and Appeal Rules, 1964.

2. As per the report recently received from the SDO (Civil), South Salmara, Hatsingimari, Rs.2.40 lakhs was disbursed to the Supdt. Under Buniyad Scheme, as 1st instalment. He utilized some amount of allotted fund deviating from the plan and estimate approved by the B.C. Dhubri. The technical officer, on spot verification, has reported that out of the sanctioned amount of money amounting to Rs.2.40 lakhs, the Supdt. has spent Rs.1.60 lakhs and the remaining Rs.80,000/- has been misappropriated by the Supdt. So he is a financially corrupted Govt. Employee. It is reported by the President of M.C. of J.K. Arabic College that he never consulted and took approval of the construction committee.

Comments :-

1) For rectification of the character of such a delinquent and corrupted Govt servant, the Supdt. I/c J.K. Arabic College should be placed under suspension giving the charge of Supdt. To the next senior teacher of the college teaching staff cutting at least two increments of his salaries under the provisions laid down in Rule 7 of the Discipline and Appeal Rules, 1964. Before taking such action, the member of standing council, Education Deptt. should be consulted by taking his legal advice. Because there is an interim order passed by the Hon'ble Court in W.P. (C) No.

2) The misappropriated amount of Rs.80,000/- should be recovered from the Supdt i/c Mr. A.k. Azad.

3) The remaining amount of Rs.1.60 lakhs should not be disbursed to Mr. A.K. Azad for construction of the College building.

As per the statements made in Para-11 of the writ petition, the petitioner could come to know about the aforesaid report dated 22.5.2007 when he was released from the post of Superintendent of the college in question. He was relieved of the charge of the post of Superintendent by order dated 13.6.2007, which is reproduced below :-

No.DSE/Illeg/I/2005/147 Dated Kahilipara the 13th June/07.

O R D E R

On enquiry of different materials on records and on hearing in person by the enq

uiry officers, it is found that the report received from the S.D.O. (Civil) Hats ingimari Rs. 2.40 lakhs was disbursed to Mr. Abul Kalam Azad, i/c Supdt. Of J.K. Ar. College under Buniyad Scheme as 1st installment by the Dy. Commissioner, Dh ubri, Mr. Abul Kalam Azad utilized some amount of allotted fund deviating from t he Plan and estimate approved by the Dy. Commissioner, Dhubri. The technical off icer on spot verification has also reported that out of the sanctioned amount of money amounting Rs. 2.40 lakhs, the i/c Supdt. has spent Rs. 1.60 lakhs and the remaining 80,000/- (Eighty thousand) has been misappropriated by the i/c Supdt. of the College. Mr. Abul Kalam Azad shall deposit Rs. 80,000/- (Eighty thousand) in cash to the College funds within 2 (two) months in 2 (two) equal installmen ts from the date of receipt of this order.

Consequent upon, Mr. Abul Kalam Azad, the i/c Supdt of J.K. Arabic College is he reby released from the i/c Supdt. with immediate effect and Mr. Abdus Samad Sr. most M.M. Asstt. Teacher is hereby allowed current charge to act as i/c Supdt. o f the College vice Mr. Abul Kalam Azad, under FR 49(c) in addition to his normal duties till the regular Supdt. is appointed as per Assam Madrassa provincialisa tion Act/95 or until further orders.

Sd/- M. Ali,
Director of Madrassa Education, Assam
Kahilipara, Guwahati-19

The aforesaid order dated 13.6.2007 was put to challenge by the petition er by filing the writ petition being W.P. (C) No.3131/2007. Writ petition has be en disposed of upholding the release of the petitioner as in-charge Superintende nt. The order dated 3.9.2007, by which the writ petition was disposed of, is qu oted below :-

03.09.2007

Heard Mr. M.H. Rajbarbhuiya, learned counsel for the petitioner as well as Mr. B .D. Konwar, learned counsel for the respondent No. 4. I have also heard Mr. U.K. Goswami, learned Standing Counsel, Education Department.

The petitioner is aggrieved by Annexure-11 order dated 13.6.2007 issued by the D irector of Madrassa Education, Assam. By the said order, the petitioner has been released from his assignment as Superintendent i/c and in his place, the respon dent No. 4 has been entrusted with the task. The order reveals that as per the r eport furnished, the petitioner has misappropriated an amount of Rs. 80,000/- o ut of 2.40 lakhs granted in favour of the college for construction of building e tc. Referring to Annexure-9 report dated 13.3.2007, furnished to the Deputy Comm issioner by the Sub-divisional Officer (C), the petitioner has contended that th e report does not disclose misappropriation of Rs. 80,000/-. As per the report d ated 13.3.2007 out of released amount of Rs. 2.40 lakhs, an amount of Rs. 1,92,0 00/- only was spent. Thus, as per the said report also there was some deviation in respect of utilization of fund.

As per the subsequent report dated 22.5.2007 prepared by the Inquiry Officer, wh o is the Joint Director of Secondary Education, Assam, the petitioner has misapp ropriated an amount of Rs. 80,000/-. In the said report, the following comments are made:

1.For rectification of the character of such a delinquent and corrupted Govt. se rvant, the Supdt. i/c J.K. Arabic College should be placed under suspension givi ng the charge of Supdt. to the next senior teacher of the college teaching staff cutting at least two increments of his salaries under the provisions laid down in Rule 7 of the Discipline and Appeal Rules, 1964. Before taking such action, t he member of standing counsel, Education Department should be consulted by takin g his legal advice. Because there is an interim order passed by the Hon’ble Cour t.

2.The misappropriated amount of Rs. 80,000/- should be recovered from the Supdt. i/c A.K. Azad.

3.The remaining amount of Rs. 1.60 lakhs should not be disbursed to Mr. A.K. Azad for construction of the College building.

From the above, it will be seen that in both the reports, there was finding against the petitioner. If there was loss of confidence on the petitioner, there was nothing wrong in releasing the petitioner from the charge of the post of Superintendent. Admittedly, the petitioner was not holding the post on regular basis, but was only holding the charge.

As regards recovery of the amount stated to have been misappropriated by the petitioner, the respondents will be at liberty to proceed with the matter in accordance with law.
With the above observation, writ petition is disposed of. At this stage, Mr. Rajbarbhuiya, the learned counsel petitioner submits that the respondent No. 4 has not qualified for the post of Superintendent. On the other hand Mr. Konwar, learned counsel for the respondent No. 4 disputes the same. He further submits that since the respondent No. 4 is holding the charge of the post only, this aspect of the matter is misplaced. It is the respondents to consider that aspect of the matter.

Writ petition is disposed of.

From the above materials, more particularly, the order dated 3.9.2007, it will be seen that this Court took note of the enquiry report dated 22.5.2007 towards disposal of the earlier writ petition. Although the petitioner has made a statement in Para-11 of the writ petition about filing of the earlier writ petition making a challenge to the order of release dated 13.6.2007, but it has not been disclosed that the said writ petition has been disposed of. The reasons for such non-disclosure is obvious.

When the release of the petitioner as in-charge Superintendent, upon a reference to the report dated 22.5.2007 has been upheld by this Court by its order dated 3.9.2007 passed in WP(C) No.3131/2007, it is not understood as to how the petitioner could make independent challenge to the same very report and that too, without mentioning about the outcome of the earlier writ petition i.e. WP (C) No.3131/2007.

The enquiry report is not on the basis of any enquiry conducted as per the provisions of the Assam Services (Discipline & Appeal) Rules, 1964. The report was prepared on the basis of the prima facie materials. There is nothing wrong in making such enquiry to find out the truth. Such findings in the fact finding report are only tentative. This is precisely the reason as to why in the comments made by the Enquiry Officer, suggestions have been made for placing the petitioner under suspension and to initiate proceeding as per the provisions of the Assam Services (Discipline & Appeal) Rules, 1964.

For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly, it is dismissed. In addition, there being suppression of material fact in not making disclosure that the earlier writ petition being W.P. (C) No.3131/2007 was disposed of by order dated 3.9.2007, a cost of Rs.5,000/- is awarded to the respondents to be born by the petitioner. Be it stated here that this writ petition was filed on 24.9.2007 i.e. after 21 days of disposal of the earlier writ petition on 3.9.2007.